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6 Attorneys for Defendants City of Hayward,
Lloyd Lowe, and Jason Corsolini

7 UNITED STATES DISTRICT COURT
8
9 NORTHERN DISTRICT OF CALIFORNIA

10 SALEH ALI, individually, and as Administrator
of the Estate of NASIR SOLIS

Case No.: C 07 -04718 (EMC)

11 Plaintiff,

DEFENDANTS' ANSWER TO
COMPLAINT

12 -vs-

AND

13 CITY OF HAYWARD, a municipal corporation;
LLOYD LOWE, in his capacity as Chief of
14 Police for the CITY OF HAYWARD, JASON
CORSOLINI, individually and in his capacity as
15 an officer for the CITY OF HAYWARD, and
DOES 1-25, inclusive,

DEMAND FOR TRIAL BY JURY

16 Defendants
17
18 _____/

19 Defendants City of Hayward, Lloyd Lowe, and Jason Corsolini respond to plaintiff's
20 complaint for damages, as follows:

21 1. Defendants admit that plaintiff purports to invoke jurisdiction of this court
22 pursuant to Title 28 of the United States Code Section 1331 and 1343, and the court's pendent
23 jurisdiction over claims arising under state law otherwise defendants deny generally and
24 specifically each and every remaining allegations of paragraph 1 of plaintiff's complaint.

25 2. Defendants have insufficient information and knowledge to respond to the
26 allegations contained in paragraph 2 of plaintiff's complaint, and, on that basis, deny generally
27 and specifically each and every allegation contained in said paragraph.

1 3. Defendants admit that the City of Hayward is a municipal corporation, otherwise
2 defendants deny generally and specifically each and every remaining allegation of paragraph 3 of
3 plaintiff's complaint.

4 4. Defendants admit and that Lloyd Lowe is/was Chief of Police for the City of
5 Hayward, otherwise defendants deny generally and specifically each and every remaining
6 allegation of paragraph 4 of plaintiff's complaint.

7 5. Defendants admit that Jason Corsolini is/was a Hayward Police Department
8 officer, otherwise defendants deny generally and specifically each and every remaining allegation
9 of paragraph 5 of plaintiff's complaint.

10 6. Defendants have insufficient information and knowledge to respond to the
11 allegations contained in paragraph 6 of plaintiff's complaint, and, on that basis, deny generally
12 and specifically each and every allegation contained in said paragraph.

13 7. Defendants have insufficient information and knowledge to respond to the
14 allegations contained in paragraph 7 of plaintiff's complaint, and, on that basis, deny generally
15 and specifically each and every allegation contained in said paragraph.

16 8. Defendants have insufficient information and knowledge to respond to the
17 allegations contained in paragraph 8 of plaintiff's complaint, and, on that basis, deny generally
18 and specifically each and every allegation contained in said paragraph.

19 9. Defendants have insufficient information and knowledge to respond to the
20 allegations contained in paragraph 9 of plaintiff's complaint, and, on that basis, deny generally
21 and specifically each and every allegation contained in said paragraph.

22 10. Defendants have insufficient information and knowledge to respond to the
23 allegations contained in paragraph 10 of plaintiff's complaint, and, on that basis, deny generally
24 and specifically each and every allegation contained in said paragraph.

25 11. Defendants have insufficient information and knowledge to respond to the
26 allegations contained in paragraph 11 of plaintiff's complaint, and, on that basis, deny generally
27 and specifically each and every allegation contained in said paragraph.

1 12. Defendants have insufficient information and knowledge to respond to the
2 allegations contained in paragraph 12 of plaintiff's complaint, and, on that basis, deny generally
3 and specifically each and every allegation contained in said paragraph.

4 13. Defendants have insufficient information and knowledge to respond to the
5 allegations contained in paragraph 13 of plaintiff's complaint, and, on that basis, deny generally
6 and specifically each and every allegation contained in said paragraph.

7 14. Defendants have insufficient information and knowledge to respond to the
8 allegations contained in paragraph 14 of plaintiff's complaint, and, on that basis, deny generally
9 and specifically each and every allegation contained in said paragraph.

10 15. Defendants have insufficient information and knowledge to respond to the
11 allegations contained in paragraph 15 of plaintiff's complaint, and, on that basis, deny generally
12 and specifically each and every allegation contained in said paragraph.

13 16. Defendants have insufficient information and knowledge to respond to the
14 allegations contained in paragraph 16 of plaintiff's complaint, and, on that basis, deny generally
15 and specifically each and every allegation contained in said paragraph.

16 17. Defendants have insufficient information and knowledge to respond to the
17 allegations contained in paragraph 17 of plaintiff's complaint, and, on that basis, deny generally
18 and specifically each and every allegation contained in said paragraph.

19 18. Defendants have insufficient information and knowledge to respond to the
20 allegations contained in paragraph 18 of plaintiff's complaint and, on that basis, deny generally
21 and specifically each and every allegation contained in said paragraph.

22 19. Defendants have insufficient information and knowledge to respond to the
23 allegations contained in paragraph 19 of plaintiff's complaint and, on that basis, deny generally
24 and specifically each and every allegation contained in said paragraph.

25 20. Defendants have insufficient information and knowledge to respond to the
26 allegations contained in paragraph 20 of plaintiff's complaint and, on that basis, deny generally
27 and specifically each and every allegation contained in said paragraph.

1 21. Defendants have insufficient information and knowledge to respond to the
2 allegations contained in paragraph 21 of plaintiff's complaint and, on that basis, deny generally
3 and specifically each and every allegation contained in said paragraph.

4 22. Defendants have insufficient information and knowledge to respond to the
5 allegations contained in paragraph 22 of plaintiff's complaint and, on that basis, deny generally
6 and specifically each and every allegation contained in said paragraph.

7 23. Defendants have insufficient information and knowledge to respond to the
8 allegations contained in paragraph 23 of plaintiff's complaint, and, on that basis, deny generally
9 and specifically each and every allegation contained in said paragraph.

10 24. Defendants have insufficient information and knowledge to respond to the
11 allegations contained in paragraph 24 of plaintiff's complaint, and, on that basis, deny generally
12 and specifically each and every allegation contained in said paragraph.

13 25. Defendants have insufficient information and knowledge to respond to the
14 allegations contained in paragraph 25 of plaintiff's complaint, and, on that basis, deny generally
15 and specifically each and every allegation contained in said paragraph.

16 26. Defendants have insufficient information and knowledge to respond to the
17 allegations contained in paragraph 26 of plaintiff's complaint, and, on that basis, deny generally
18 and specifically each and every allegation contained in said paragraph.

19 27. Defendants have insufficient information and knowledge to respond to the
20 allegations contained in paragraph 27 of plaintiff's complaint, and, on that basis, deny generally
21 and specifically each and every allegation contained in said paragraph.

22 28. Defendants have insufficient information and knowledge to respond to the
23 allegations contained in paragraph 28 of plaintiff's complaint, and, on that basis, deny generally
24 and specifically each and every allegation contained in said paragraph.

25 29. Defendants have insufficient information and knowledge to respond to the
26 allegations contained in paragraph 29 of plaintiff's complaint, and, on that basis, deny generally
27 and specifically each and every allegation contained in said paragraph.

1 30. Defendants have insufficient information and knowledge to respond to the
2 allegations contained in paragraph 30 of plaintiff's complaint, and, on that basis, deny generally
3 and specifically each and every allegation contained in said paragraph.

4 31. Defendants have insufficient information and knowledge to respond to the
5 allegations contained in paragraph 31 of plaintiff's complaint, and, on that basis, deny generally
6 and specifically each and every allegation contained in said paragraph.

7 32. Defendants have insufficient information and knowledge to respond to the
8 allegations contained in paragraph 32 of plaintiff's complaint, and, on that basis, deny generally
9 and specifically each and every allegation contained in said paragraph.

10 33. Defendants have insufficient information and knowledge to respond to the
11 allegations contained in paragraph 33 of plaintiff's complaint, and, on that basis, deny generally
12 and specifically each and every allegation contained in said paragraph.

13 34. Defendants have insufficient information and knowledge to respond to the
14 allegations contained in paragraph 34 of plaintiff's complaint, and, on that basis, deny generally
15 and specifically each and every allegation contained in said paragraph.

16 35. Defendants have insufficient information and knowledge to respond to the
17 allegations contained in paragraph 35 of plaintiff's complaint, and, on that basis, deny generally
18 and specifically each and every allegation contained in said paragraph.

19 36. Defendants have insufficient information and knowledge to respond to the
20 allegations contained in paragraph 36 of plaintiff's complaint, and, on that basis, deny generally
21 and specifically each and every allegation contained in said paragraph.

22 37. Defendants have insufficient information and knowledge to respond to the
23 allegations contained in paragraph 37 of plaintiff's complaint, and, on that basis, deny generally
24 and specifically each and every allegation contained in said paragraph.

25 38. Defendants have insufficient information and knowledge to respond to the
26 allegations contained in paragraph 38 of plaintiff's complaint, and, on that basis, deny generally
27 and specifically each and every allegation contained in said paragraph.

1 39. Defendants have insufficient information and knowledge to respond to the
2 allegations contained in paragraph 39 of plaintiff's complaint, and, on that basis, deny generally
3 and specifically each and every allegation contained in said paragraph.

4 40. Defendants have insufficient information and knowledge to respond to the
5 allegations contained in paragraph 40 of plaintiff's complaint, and, on that basis, deny generally
6 and specifically each and every allegation contained in said paragraph.

7 41. Defendants have insufficient information and knowledge to respond to the
8 allegations contained in paragraph 41 of plaintiff's complaint and, on that basis, deny generally
9 and specifically each and every allegation contained in said paragraph.

10 42. Defendants have insufficient information and knowledge to respond to the
11 allegations contained in paragraph 42 of plaintiff's complaint and, on that basis, deny generally
12 and specifically each and every allegation contained in said paragraph.

13 43. Defendants have insufficient information and knowledge to respond to the
14 allegations contained in paragraph 43 of plaintiff's complaint, and, on that basis, deny generally
15 and specifically each and every allegation contained in said paragraph.

16 44. Defendants have insufficient information and knowledge to respond to the
17 allegations contained in paragraph 44 of plaintiff's complaint, and, on that basis, deny generally
18 and specifically each and every allegation contained in said paragraph.

19 45. Defendants have insufficient information and knowledge to respond to the
20 allegations contained in paragraph 45 of plaintiff's complaint, and, on that basis, deny generally
21 and specifically each and every allegation contained in said paragraph.

22 46. Defendants have insufficient information and knowledge to respond to the
23 allegations contained in paragraph 46 of plaintiff's complaint, and, on that basis, deny generally
24 and specifically each and every allegation contained in said paragraph.

25 47. Defendants have insufficient information and knowledge to respond to the
26 allegations contained in paragraph 47 of plaintiff's complaint, and, on that basis, deny generally
27 and specifically each and every allegation contained in said paragraph.

1 48. Defendants have insufficient information and knowledge to respond to the
2 allegations contained in paragraph 48 of plaintiff's complaint, and, on that basis, deny generally
3 and specifically each and every allegation contained in said paragraph.

4 49. Defendants have insufficient information and knowledge to respond to the
5 allegations contained in paragraph 49 of plaintiff's complaint, and, on that basis, deny generally
6 and specifically each and every allegation contained in said paragraph.

7 50. Defendants have insufficient information and knowledge to respond to the
8 allegations contained in paragraph 50 of plaintiff's complaint, and, on that basis, deny generally
9 and specifically each and every allegation contained in said paragraph.

10 51. Defendants have insufficient information and knowledge to respond to the
11 allegations contained in paragraph 51 of plaintiff's complaint, and, on that basis, deny generally
12 and specifically each and every allegation contained in said paragraph.

13 52. Defendants have insufficient information and knowledge to respond to the
14 allegations contained in paragraph 52 of plaintiff's complaint, and, on that basis, deny generally
15 and specifically each and every allegation contained in said paragraph.

16 53. Defendants have insufficient information and knowledge to respond to the
17 allegations contained in paragraph 53 of plaintiff's complaint, and, on that basis, deny generally
18 and specifically each and every allegation contained in said paragraph.

19 54. Defendants have insufficient information and knowledge to respond to the
20 allegations contained in paragraph 54 of plaintiff's complaint, and, on that basis, deny generally
21 and specifically each and every allegation contained in said paragraph.

22 55. Defendants have insufficient information and knowledge to respond to the
23 allegations contained in paragraph 55 of plaintiff's complaint, and, on that basis, deny generally
24 and specifically each and every allegation contained in said paragraph.

25 56. Defendants have insufficient information and knowledge to respond to the
26 allegations contained in paragraph 56 of plaintiff's complaint, and, on that basis, deny generally
27 and specifically each and every allegation contained in said paragraph.

1 57. Defendants have insufficient information and knowledge to respond to the
2 allegations contained in paragraph 57 of plaintiff's complaint, and, on that basis, deny generally
3 and specifically each and every allegation contained in said paragraph.

4 58. Defendants have insufficient information and knowledge to respond to the
5 allegations contained in paragraph 58 of plaintiff's complaint, and, on that basis, deny generally
6 and specifically each and every allegation contained in said paragraph.

7 59. Defendants have insufficient information and knowledge to respond to the
8 allegations contained in paragraph 59 of plaintiff's complaint, and, on that basis, deny generally
9 and specifically each and every allegation contained in said paragraph.

10 60. Defendants have insufficient information and knowledge to respond to the
11 allegations contained in paragraph 60 of plaintiff's complaint, and, on that basis, deny generally
12 and specifically each and every allegation contained in said paragraph

13 61. Defendants have insufficient information and knowledge to respond to the
14 allegations contained in paragraph 61 of plaintiff's complaint and, on that basis, deny generally
15 and specifically each and every allegation contained in said paragraph.

16 62. Defendants have insufficient information and knowledge to respond to the
17 allegations contained in paragraph 62 of plaintiff's complaint and, on that basis, deny generally
18 and specifically each and every allegation contained in said paragraph.

19 63. Defendants have insufficient information and knowledge to respond to the
20 allegations contained in paragraph 63 of plaintiff's complaint and, on that basis, deny generally
21 and specifically each and every allegation contained in said paragraph.

22 64. Defendants have insufficient information and knowledge to respond to the
23 allegations contained in paragraph 64 of plaintiff's complaint and, on that basis, deny generally
24 and specifically each and every allegation contained in said paragraph.

25 65. Defendants have insufficient information and knowledge to respond to the
26 allegations contained in paragraph 65 of plaintiff's complaint and, on that basis, deny generally
27 and specifically each and every allegation contained in said paragraph.

1 66. Defendants have insufficient information and knowledge to respond to the
2 allegations contained in paragraph 66 of plaintiff's complaint and, on that basis, deny generally
3 and specifically each and every allegation contained in said paragraph.

4 **AFFIRMATIVE DEFENSES**

5 AS A FIRST AFFIRMATIVE DEFENSE to each cause of action of plaintiff's complaint,
6 defendants allege that they are immune from liability for the acts and omissions alleged in
7 plaintiff's complaint by virtue of the provisions of Sections 815, 815.2, 815.6, 818, 818.8, 820.2,
8 820.4, 820.8, 821.6, 822.2, 844.6 and 845.6 of the California Government Code.

9 AS A SECOND AFFIRMATIVE DEFENSE to each cause of action of plaintiff's
10 complaint, defendants allege that neither plaintiff's complaint nor any of its alleged causes of
11 action state facts sufficient to constitute a cause of action against defendants.

12 AS A THIRD AFFIRMATIVE DEFENSE to each cause of action of plaintiff's complaint,
13 defendants allege that plaintiff did not use the heightened pleading standards as required by City
14 of Canton v. Harris, 489 U.S. 378 (1989) and its progeny, and have thus failed to state a cause of
15 action against defendant police officers in their individual capacities.

16 AS A FOURTH AFFIRMATIVE DEFENSE to each cause of action of plaintiff's
17 complaint, defendants allege that they are immune from liability for the arrest, detention and
18 restraint of plaintiff pursuant to the provisions of California Welfare and Institutions Code Section
19 5154, Government Code Section 856, and Penal Code Sections 835, 835a, 836, and 847, in that
20 the officers had reasonable suspicion/probable cause to believe that plaintiff had committed a
21 public offense/was a danger to others, or to himself, or gravely disabled, and that any and all force
22 used in effecting his arrest, detention and restraint, was lawful, reasonable, and necessary, under
23 the circumstances at the time of the incident.

24 AS A FIFTH AFFIRMATIVE DEFENSE to each cause of action of plaintiff's complaint ,
25 defendants allege that at the time and place mentioned in plaintiff's complaint, defendants' use of
26 force, if any there was, was necessary for defendants' self defense, defense of others, and to effect
27 the lawful detention/arrest of plaintiff.

1 AS A SIXTH AFFIRMATIVE DEFENSE to each cause of action of plaintiff's complaint ,
2 defendants allege that they are entitled to qualified and official immunity. Defendants acted at all
3 times in good faith, with due care, within the scope of discretion, and pursuant to laws,
4 regulations, rules, and practices reasonably believed to be in accordance with the Constitution and
5 laws of the United States. There is no liability pursuant to the Federal Civil Rights Act where one
6 acts in good faith and entertains an honest, reasonable belief that one's actions are in accord with
7 clearly established law.[Harlow v. Fitzgerald, 457 U.S. 800, 818 (1982) ; Saucier v. Katz, 533
8 U.S. 194 (2001); Smith v. Hemet, 394 F.3d 689 (9th Cir. 2005).]

9 AS A SEVENTH AFFIRMATIVE DEFENSE to each cause of action of plaintiff's
10 complaint, defendants allege that plaintiff was comparatively at fault in the manner and style as
11 set forth in Li v. Yellow Cab Company, 13 Cal.3d 804 (1975), and defendants pray that any and
12 all damages sustained by plaintiff be reduced by the percentage of his own negligence in the
13 happenings herein.

14 AS AN EIGHTH AFFIRMATIVE DEFENSE to each cause of action of plaintiff's
15 complaint, defendants allege that the damages sustained by plaintiff, if any, were proximately
16 caused, in whole or in part by others for whom these answering defendants are neither liable or
17 responsible. Should defendants be found to be liable to plaintiff, which liability is expressly
18 denied, said defendants are entitled to have any award against them abated, reduced, or eliminated
19 to the extent that the negligence, carelessness, or fault of any of said other persons or entities
20 contributed to plaintiff's damages, if any there were.

21 AS A NINTH AFFIRMATIVE DEFENSE to each cause of action of plaintiff's complaint,
22 defendants allege that plaintiff's complaint exceeds the scope of the claim presented to defendant
23 City of Hayward pursuant to California Government Code §§910 and 911.2.

24 AS A TENTH AFFIRMATIVE DEFENSE to each cause of action of plaintiff's
25 complaint, defendants allege that plaintiffs' complaint fails to state a cause of action against these
26 defendants under the holding in Monell v. Department of Social Services of the City of New York
27 436 U.S. 658 (1978), and its progeny.

1 AS AN ELEVENTH AFFIRMATIVE DEFENSE to each cause of action of plaintiff's
2 complaint, defendants allege that the outcome of the incidents alleged in plaintiff's complaint
3 would have been the same regardless of any additional or different training which might have
4 been provided to the officers involved.

5 AS A TWELFTH AFFIRMATIVE DEFENSE to each cause of action of plaintiff's
6 complaint, defendants allege that at all relevant times, defendants acted independently and not in
7 association or concert with any agent or servant of any other defendant, including defendants sued
8 herein under the fictitious names of their employer, employees or agents.

9 AS A THIRTEENTH AFFIRMATIVE DEFENSE to each cause of action of plaintiff's
10 complaint, defendants allege that plaintiff has failed to mitigate her damages.

11 AS A FOURTEENTH AFFIRMATIVE DEFENSE to each cause of action of plaintiff's
12 complaint, defendants allege that plaintiff willingly, voluntarily, and knowingly assumed each,
13 every, and all of the risks and hazards involved in the activities alleged in the complaint.

14 AS A FIFTEENTH AFFIRMATIVE DEFENSE to each cause of action of plaintiff's
15 complaint, defendants allege that plaintiff's and Solis' own conduct estops plaintiff from claiming
16 the damages alleged in plaintiff's complaint.

17 AS A SIXTEENTH AFFIRMATIVE DEFENSE to each cause of action of plaintiff's
18 complaint, defendants allege that defendants are entitled to reasonable attorney's fees and costs of
19 suit upon prevailing within the meaning of 42 U.S.C. § 1988, California Code of Civil Procedure
20 §1038, and Rule 11 of the Federal Rules of Civil Procedure.

21 AS A SEVENTEENTH AFFIRMATIVE DEFENSE to each cause of action of plaintiff's
22 complaint, defendants allege that plaintiff's complaint, in its entirety, is barred by the applicable
23 statute of limitations.

24 AS AN EIGHTEENTH AFFIRMATIVE DEFENSE to each cause of action of plaintiff's
25 complaint, defendants allege that defendant City of Hayward and all defendants sued in their
26 official capacity are immune from the imposition of punitive damages.

27 AS A NINETEENTH AFFIRMATIVE DEFENSE to each cause of action of plaintiff's

1 complaint defendants allege that because plaintiff's complaint is written in legal conclusory terms,
2 all affirmative defenses available to defendants cannot be fully anticipated or ascertained at this
3 time. Accordingly, defendants reserve the right to assert additional affirmative defenses available
4 to defendants that cannot be fully anticipated or ascertained at this time. Accordingly, defendants
5 reserve the right to assert additional affirmative defenses, if and when the extent that such
6 affirmative defenses are revealed.

7 **PRAYER**

8 WHEREFORE, defendants pray that plaintiff takes nothing by way of her complaint, that
9 defendants be dismissed from this action and be awarded their costs and attorney's fees, and for
10 any other relief that the court may deem just and proper.

11 **DEFENDANTS' DEMAND FOR TRIAL BY JURY**

12 To the clerk of the above entitled court:

13 PLEASE TAKE NOTICE that these answering defendants herein demand a trial by jury as
14 to all issues triable thereby, herein.

15
16 DATED: October 15, 2007

MICHAEL J. O'TOOLE, City Attorney

17
18 By: /s/
19 RANDOLPH S. HOM,
20 Assistant City Attorney
21 Attorneys for Defendants
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